

STATE OF MICHIGAN
COURT OF APPEALS

In re I. J. FANNIN, Minor.

UNPUBLISHED
March 10, 2016

No. 329036
Monroe Circuit Court
Family Division
LC No. 12-022699-NA

Before: SAAD, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because reasonable efforts were made to facilitate reunification and the trial court did not clearly err by terminating respondent's parental rights, we affirm.

I. FACTUAL BACKGROUND

In July 2012, the court authorized the initial petition involving this child, who was then 12 months old. According to the petition, respondent had a substance abuse problem which inhibited her ability to care for the child and she left the child without proper care and custody. Further, she failed to provide stable housing or financial support for her child. Respondent admitted the allegations and the court assumed jurisdiction over the minor child. The court adopted a Parent-Agency Agreement requiring respondent to participate in various services, visit her child, and obtain and maintain income and housing.

The court conducted numerous review hearings through 2014. The Department of Health and Human Services (DHHS) referred respondent to various services required by her treatment plan, but she inconsistently participated, continued to use drugs, and was repeatedly jailed during this time frame. Respondent also failed to have consistent appropriate housing, lacked income, and failed to regularly visit her child. In August 2014, respondent was arrested and jailed on a probation violation. She was sentenced to serve a prison term and transferred in October 2014 to prison. A termination petition was filed by DHHS, and, following a hearing, the court terminated respondent's parental rights in August of 2015. She now appeals as of right.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing

evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

On appeal, we review the trial court's decision regarding statutory grounds for termination and the child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

III. ANALYSIS

Respondent argues that the trial court clearly erred by terminating her parental rights to the child. In particular, respondent asserts that, in violation of MCL 712A.19a(2), DHHS failed to make reasonable efforts to reunify respondent and the child during the 11 months that respondent was incarcerated before termination of her parental rights. Respondent also argues that clear and convincing evidence did not support termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), and (g). According to respondent, she has made significant progress, including achieving sobriety while in prison, she can provide proper care and custody in the form of placement with relatives, and there is no evidence that her substance abuse issues have resulted in her abuse or neglect of the child. Further, respondent argues that the child's best interests will not be served by termination because respondent has a bond with the child and guardianship offers a suitable alternative to termination. We disagree.

With respect to reunification efforts, reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *In re Mason*, 486 Mich at 152; MCL 712A.19a(2). The statutory obligation to provide a parent with services exists even if the parent is incarcerated. See *In re Mason*, 486 Mich at 152, 156-159. However, while DHHS "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

In this case, as the trial court noted, respondent's reliance on *Mason* is entirely misplaced. Unlike the situation in *Mason*, respondent was not continuously incarcerated and DHHS offered her numerous services before her incarceration, including parenting classes, individual therapy, substance abuse treatment, visitation, and a referral for mental health services. Yet, respondent failed to benefit from parenting classes, failed to follow through with recommended mental health services, failed to complete several substance abuse programs, and continued to relapse into drug use and engage in nonconstructive behavior. In other words, despite numerous services over the course of two years, respondent failed in her own responsibility to participate in, and benefit from, the services that were offered. See *Frey*, 297 Mich App at 248. After respondent's incarceration in 2014, the foster care worker explained that the DHHS could not provide services to respondent while she was in prison and only required respondent to complete any services offered to her there. Further, respondent did in fact participate in some services while

imprisoned, including a parenting class, substance abuse treatment, GED classes, and AA/NA meetings. Moreover, respondent received the opportunity to participate in all court proceedings as required under MCR 2.004. On this record, the trial court did not clearly err in finding that DHHS made reasonable reunification efforts. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

Moreover, the trial court did not clearly err in finding at least one statutory ground for termination under MCL 712A.19b(3) had been proven by clear and convincing evidence. *In re Ellis*, 294 Mich App at 32. The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which state:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Relevant to these subsections, the trial court assumed jurisdiction over the minor child because respondent lacked stable housing and income for her child, she had a substance abuse problem and she could not provide proper care and custody. At the time of termination, the evidence showed that respondent had never established stability in housing or the financial means to support her child during the lengthy time period this case was pending. Although respondent claimed she was working on her substance abuse issue and refrained from drug use while in prison, on numerous occasions in the past she failed to comply with substance abuse programs. And, though commendable, she had maintained her newly achieved sobriety only while incarcerated. In contrast, she repeatedly relapsed into drug use before her imprisonment, and the foster care worker did not believe that respondent would be able to maintain sobriety upon her release from prison based on her past conduct. Overall, despite the passage of three

years, respondent had not substantially complied with her treatment plan and had not made any significant progress toward reunification. Given this evidence, the trial court did not clearly err by concluding that the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age. See MCL 712A.19b(3)(c)(i); *In re Trejo*, 462 Mich at 357-359.

Respondent's clear lack of progress on her treatment plan, her inability to provide housing and income for her child, and her continued struggle with substance abuse likewise support termination under MCL 712A.19b(3)(g) and (j). See *In re Trejo*, 462 Mich at 346 n 3, 360-361; *In re Laster*, 303 Mich App 485, 493-494; 845 NW2d 540 (2013). In this regard, we also reject respondent's argument that termination was not warranted under subsection (3)(g) because the child was continuously placed in appropriate relative care. In particular, the child was placed with relatives during the proceedings, including at the time of the termination hearing when respondent was incarcerated. It is true that, "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." *In re Mason*, 486 Mich at 160. Rather, in some cases an incarcerated parent may "preserve" his or her legal rights and "fulfill his duty to provide proper care and custody . . . by voluntarily granting legal custody to his relatives during his remaining term of incarceration." *Id.* at 163-164. See also *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991). However, contrary to respondent's argument, her present inability to care for the child while incarcerated was not the reason the trial court terminated her parental rights. Instead, the trial court cited respondent's lack of stability in housing, her lack of income and her substance abuse problem, issues which lead to the court to assume jurisdiction in 2012 and which persisted for the three years the case was pending. In short, the trial court did not clearly in err by finding statutory grounds for termination under MCL 712A.19b(3)(g) and (j).

Finally, the trial court also did not clearly err in determining that termination of respondent's parental rights was in the child's best interests. In deciding a child's best interests, the trial court "should weigh all the evidence available" and "consider a wide variety of factors." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). For example, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court may also consider the parent's compliance with her case service plan, the children's well-being while in care, and the possibility of adoption. *In re White*, 303 Mich App at 714.

In this case, the evidence established that respondent lacked a meaningful bond with her child and had not visited him in more than 18 months at the time of termination. Moreover, she failed to comply with or benefit from a treatment plan designed to ensure the safe return of her child, and she could not provide the stability the child needed. For the vast majority of the child's life, respondent had struggled with issues of addiction, housing instability, criminality, and a lack of income. Respondent conceded that it would be eight or nine months, at least, after her release from prison before she would be able to care for the child. On the record presented, it appears unlikely that the child could be returned to respondent's care "within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 249. In contrast, the child was doing well in his relative placement, and two relatives who shared a strong bond with the child desired to adopt him. Contrary to respondent's argument that the trial court failed to fully consider the option of

a guardianship, the court noted that no relative requested guardianship and that both relatives who were interested in caring for the child desired adoption. The court also noted that guardianships did not assure stability and permanency, and that adoption was more favorable in achieving the permanence needed in this case. Thus, the court explored the option of guardianship but determined that it would not be in the child's best interests. We see nothing clearly erroneous in the trial court's findings.

Given all these circumstances, the trial court did not clearly err in concluding that termination of respondent's parental rights was in the child's best interests or in terminating respondent's parental rights to the child under MCL 712A.19b(3)(c)(i), (g), and (j). See MCL 712A.19b(5).

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Joel P. Hoekstra